

## **TITLE XIII—MARITIME EDUCATION AND TRAINING<sup>62</sup>**

**SEC. 1301. CONGRESSIONAL DECLARATION OF POLICY (46 App. U.S.C. 1295 (2001)).** It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States. In furtherance of this policy—

(1) the Secretary of Transportation is authorized to take the steps necessary to provide for the education and training of citizens of the United States who are capable of providing for the safe and efficient operation of the merchant marine of the United States at all times and as a naval and military auxiliary in time of war or national emergency; and

(2) the Secretary of Navy, in cooperation with the Maritime Administrator and the head of each State maritime academy, shall assure that the training of future merchant marine officers at the United States Merchant Marine Academy and at the State maritime academies includes programs for naval science training in the operation of merchant marine vessels as a naval and military auxiliary and that naval officer training programs for the training of future officers, insofar as possible, be maintained at designated maritime academies consistent with United States Navy standards and needs.

**SEC. 1302. DEFINITIONS (46 App. U.S.C. 1295a (2001)).** For purposes of this title—

(1) the term “Secretary” means the Secretary of Transportation;

(2) the term “Academy” means the United States Merchant Marine Academy located at Kings Point, New York which is maintained under section 1303;

(3) the term “State maritime academy” means any maritime academy or college which is assisted under section 1304 and which is sponsored

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<sup>62</sup> The term “citizen of the United States” used throughout Title XIII is defined in Section 905(c) of the Merchant Marine Act (page 122, *supra.*), as follows: “(c) The words ‘citizen of the United States’ include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U.S.C., title 46, sec. 802), and with respect to a corporation under title VI of this Act, all directors of the corporation are citizens of the United States and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum.” Section 2 of the Shipping Act, 1916 (followed by provisions that affect Section 2 citizenship requirements) is located at page 182, *infra.*

by any State or territory of the United States or, in the case of a regional maritime academy or college, sponsored by any group of States or territories of the United States, or both; and

(4) the term "merchant marine officer" means any person who holds a license issued by the United States Coast Guard which authorizes service—

(A) as a master, mate, or pilot on board any vessel of 1,000 gross tons or more as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title which is documented under the laws of the United States and which operates on the oceans or on the Great Lakes; or

(B) as an engineer officer on board any vessel propelled by machinery of 4,000 horsepower or more which is documented under the laws of the United States.

**SEC. 1303. MAINTENANCE OF ACADEMY (46 App. U.S.C. 1295b (2001)).**

(a) **Duty of Secretary.** The Secretary shall maintain the Academy for providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) **Nomination and appointment of cadets; designation and licensing of individuals from the Trust Territory of the Pacific Islands, Western Hemisphere nations and nations other than the United States.**

(1) Each Senator and Member of the House of Representatives, the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Delegate from American Samoa, may nominate for appointment as a cadet at the Academy any individual who is—

(A) a citizen of the United States or a national of the United States; and

(B) a resident of the State represented by such Senator if the individual is nominated by a Senator, a resident of the State in which the congressional district represented by such Member of the House of Representatives is located if the individual is nominated by a Member of the House of Representatives (or a resident of Guam, the Virgin Islands, the District of Columbia, the Commonwealth of Puerto Rico, or American Samoa if the individual is nominated by a Member of the House of Representatives representing such area), a resident of the area or installation described in paragraph (3)(A)(ii), or a son or daughter of the personnel described in such paragraph, if the individual is nominated by the Panama Canal Commission, or a resident of the Northern Mariana Islands if the individual is nominated by the Governor of the Northern Mariana Islands.

(2)(A) The Secretary shall establish minimum requirements for the individuals nominated pursuant to paragraph (1) and shall establish a system of competition for the selection of individuals qualified for appointment as cadets at the Academy.

(B) Such system of competition shall determine the relative merit of appointing each such individual to the Academy through the use of competitive examinations, an assessment of the academic background of the individual, and such other factors as are considered effective indicators of motivation and the probability of successful completion of training at the Academy.

(3)(A) Qualified individuals nominated pursuant to paragraph (1) shall be selected each year for appointment as cadets at the Academy to fill positions allocated as follows:

(i) Positions shall be allocated each year for individuals who are residents of each State and are nominated by the Members of the Congress from such State in proportion to the representation in Congress from that State.

(ii) Two positions shall be allocated each year for individuals nominated by the Panama Canal Commission who are sons or daughters of residents of any area or installation located in the Republic of Panama which is made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979, and sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in the Republic of Panama, nominated by the Panama Canal Commission.

(iii) One position shall be allocated each year for an individual who is a resident of Guam and is nominated by the Delegate to the House of Representatives from Guam.

(iv) One position shall be allocated each year for an individual who is a resident of the Virgin Islands and is nominated by the Delegate to the House of Representatives from the Virgin Islands.

(v) One position shall be allocated each year for an individual who is a resident of the Northern Mariana Islands and is nominated by the Governor of the Northern Mariana Islands.

(vi) One position shall be allocated each year for an individual who is a resident of American Samoa and is nominated by the Delegate to the House of Representatives from American Samoa.

(vii) Four positions shall be allocated each year for individuals who are residents of the District of Columbia and are nominated by

the Delegate to the House of Representatives from the District of Columbia.

(viii) One position shall be allocated each year for an individual who is a resident of the Commonwealth of Puerto Rico and is nominated by the Resident Commissioner to the United States from Puerto Rico.

(B) The Secretary shall make appointments of qualified individuals to fill the positions allocated pursuant to subparagraph (A) (from among the individuals nominated pursuant to paragraph (1)) in the order of merit determined pursuant to paragraph (2)(B) among residents of each State, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa, the District of Columbia, and the Commonwealth of Puerto Rico and among individuals nominated by the Panama Canal Commission.

(C) If positions are not filled after the appointments are made pursuant to subparagraph (B), the Secretary shall make appointments of qualified individuals to fill such positions from among all individuals nominated pursuant to paragraph (1) in the order of merit determined pursuant to paragraph (2)(B) among all such individuals.

(D) In addition, the Secretary may each year appoint without competition as cadets at the Academy not more than 40 qualified individuals possessing qualities deemed to be of special value to the Academy. In making such appointments the Secretary shall attempt to achieve a national demographic balance at the Academy.

(E) No preference shall be granted in selecting individuals for appointment as cadets at the Academy because one or more members of the immediate family of any such individual are alumni of the Academy.

(F) Any citizen of the United States selected for appointment pursuant to this paragraph must agree to apply for midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before being appointed as a cadet at the Academy.

(G) For purposes of this paragraph, the term "State" means the several States.

(4)(A) In addition to paragraph (3), the Secretary may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy.

(B) Not more than 4 individuals may receive instruction under this paragraph at any one time.

(C) Any individual receiving instruction under the authority of this paragraph shall receive the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the

Academy appointed from the United States, subject to such exceptions as shall be jointly agreed upon by the Secretary and the Secretary of the Interior.

(5)(A) In addition to paragraphs (3) and (4), the President may designate individuals from nations located in the Western Hemisphere other than the United States to receive instruction at the Academy.

(B) Not more than 12 individuals may receive instruction under this paragraph at any one time, and not more than 2 individuals receiving instruction under this paragraph at any one time may be from the same nation.

(C) Any individual receiving instruction under this subparagraph is entitled to the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(6)(A) In addition to paragraphs (3), (4), and (5), the Secretary may permit, upon approval of the Secretary of State, individuals from nations other than the United States to receive instruction at the Academy.

(B) Not more than 30 individuals may receive instruction under this paragraph at any one time.

(C) The Secretary shall insure that each nation from which an individual comes to receive instruction under this paragraph shall reimburse the Secretary for the cost of such instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(D) Any individual receiving instruction at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(7)(A) The Secretary may permit, upon approval of the Secretary of State, additional individuals from the Republic of Panama to receive instruction at the Academy, in addition to those individuals appointed under paragraphs (3), (4), (5), and (6) of this subsection.

(B) The Secretary shall be reimbursed for the cost of that instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(C) An individual receiving instructions at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(8) An individual appointed as a cadet under paragraph (3), or receiving instruction under paragraph (4), (5), (6), or (7) of this subsection is not entitled to hold a license authorizing service on a merchant marine vessel of the United States solely by reason of graduation from the Academy.

**(c)(1) Appointment of cadet as midshipman in the United States Naval Reserve.** Any citizen of the United States who is appointed as a cadet at the Academy shall be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

(2) The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States Naval Reserve to be issued an identification card (referred to as a "military ID card") and to be entitled to all rights and privileges in accordance with the same eligibility criteria as apply to other members of the Ready Reserve of the reserve components of the Armed Forces.

(3) The Secretary of the Navy shall carry out paragraphs (1) and (2) in coordination with the Secretary.

**(d) Uniforms, textbooks, and transportation allowances.** The Secretary shall provide to any cadet at the Academy all required uniforms and textbooks and allowances for transportation (including reimbursement of traveling expenses) while traveling under orders as a cadet of the Academy.

**(e) Commitment agreements.**

(1) Each individual appointed as a cadet at the Academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980, who is a citizen of the United States, shall as a condition of appointment to the Academy sign an agreement committing such individual—

(A) to complete the course of instruction at the Academy, unless the individual is separated by the Academy;

(B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy of such individual;

(C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the Academy of such individual;

(D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other

Reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from the Academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(2) If the Secretary determines that any individual who has attended the Academy for not less than 2 years has failed to fulfill the part of the agreement (required by paragraph (1)) described in paragraph (1)(A), such individual may be ordered by the Secretary of the Navy to active duty in the United States Navy to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

(3)(A) If the Secretary determines that any individual has failed to fulfill any part of the agreement (required by paragraph (1)) described in subparagraphs (B), (C), (D), (E), or (F) of paragraph (1), such individual may be ordered to active duty to serve a period of time not less than 3 years and not more than the unexpired portion (as determined by the Secretary) of the service required by subparagraph (E) of such paragraph. The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), the Secretary of Transportation—

(i) may recover from the individual the cost of education provided by the Federal Government; and

(ii) shall request the Attorney General to begin court proceedings to recover the costs of education if the Secretary decides to seek recovery under clause (i).

(4) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (1) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to paragraph (1)(E) must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(f) **Places of training.** The Secretary may provide for the training of cadets at the Academy—

- (1) on vessels owned or subsidized by the United States;
- (2) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and
- (3) in shipyards or plants and with any industrial or educational organizations.

(g) **Bachelor of science degrees awarded.** The Superintendent of the Academy may confer the degree of bachelor of science upon any individual who has met the conditions prescribed by the Secretary and who, if a citizen of the United States, has passed the examination for a merchant marine officer's license. No individual may be denied a degree under this subsection because the individual is not permitted to take such examination solely because of physical disqualification.

(h) **Board of Visitors.**

(1) A Board of Visitors to the Academy shall be established, for a term of two years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.

(2) The Board shall be composed of—

(A) 2 Senators appointed by the chairman of the Commerce, Science, and Transportation Committee of the Senate;

(B) 3 Members of the House of Representatives appointed by the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives;

(C) 1 Senator appointed by the Vice President;

(D) 2 Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(E) the chairman of the Commerce, Science, and Transportation Committee of the Senate and the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives, as ex officio members.



(3) Whenever a member of the Board is unable to attend the annual meeting provided in paragraph (1), another individual may be appointed in the manner provided by paragraph (2) as a substitute for such member.

(4) The chairmen of the Commerce, Science, and Transportation Committee of the Senate and the Merchant Marine and Fisheries Committee of the House of Representatives may designate staff members of such committees to serve without reimbursement as staff for the Board.

(5) While away from their homes or regular places of business in the performance of services for the Board, members of the Board and any staff members designated under paragraph (4) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code

**(i) Advisory Board.**

(1) An Advisory Board to the Academy shall be established to visit the Academy at least once during each academic year, for the purpose of examining the course of instruction and management of the Academy and advising the Maritime Administrator and the Superintendent of the Academy.

(2) The Advisory Board shall be composed of not more than 7 persons of distinction in education and other fields relating to the Academy who shall be appointed by the Secretary for terms not to exceed 3 years and may be reappointed.

(3) The Secretary shall appoint a chairman from among the members of the Advisory Board.

(4) While away from their homes or regular places of business in the performance of service for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(5) The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to the Advisory Board established pursuant to this subsection.

**SEC. 1304. STATE MARITIME ACADEMIES (46 App. U.S.C. 1295c (2001)).**

(a) **Cooperation and assistance.** The Secretary shall cooperate with and assist any State maritime academy in providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) **Regional maritime academies.** The Governors of all States or territories of the United States, or both, cooperating to sponsor a regional maritime academy shall designate in writing one State or territory of the United States, from among the sponsoring States or territories, or both, to conduct the affairs of such regional maritime academy. Any regional maritime academy shall be eligible for assistance from the Federal Government on the same basis as any State maritime academy sponsored by a single State or territory of the United States.

(c) **Training vessels.**<sup>63</sup>

(1)(A) The Secretary may furnish for training purposes any suitable vessel under the control of the Secretary or provided under subparagraph (B), or construct and furnish a suitable vessel if such a vessel is not available, to any State maritime academy meeting the requirements of subsection (f)(1). Any such vessel—

(i) shall be repaired, reconditioned, and equipped (including supplying all apparel, charts, books, and instruments of navigation) as necessary for use as a training ship;

(ii) shall be furnished to such State maritime academy only after application for such vessel is made in writing by the Governor of the State or territory sponsoring such State maritime academy or, with respect to a regional maritime academy the Governor of the State or territory designated pursuant to subsection (b);

(iii) shall be furnished to such State maritime academy only if a suitable port for the safe mooring of such vessel is available while it is being used by such academy;

(iv) shall be maintained in good repair by the Secretary; and

(v) shall remain the property of the United States.

(B) Any department or agency of the United States may provide to the Secretary to be furnished to any State maritime academy any vessel (including equipment) which is suitable for the purposes of this paragraph and which can be provided without detriment to the service to which such vessel is assigned.

(2) The Secretary may pay to any State maritime academy the amount of the costs of all fuel consumed by any vessel furnished under paragraph (1) while such vessel is being used for training purposes by such academy.

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<sup>63</sup> Section 101(a) of Public Law 100-202, approved December 22, 1987 (101 STAT. 1329-28), Maritime Administration Appropriations Act, Fiscal Year 1988 (46 App. U.S.C. 1295c-1) provides: "Hereafter no funds shall be appropriated for the purchase or construction of training vessels for State maritime academies unless a plan for sharing training vessels between States maritime academies has been approved by the Maritime Administration."

(3)(A) The Secretary may provide for the training of individuals attending a State maritime academy—

- (i) on vessels owned or subsidized by the United States;
- (ii) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and
- (iii) in shipyards or plants and with any industrial or educational organizations.

(B) While traveling under orders for purposes of receiving training under this paragraph, any individual who is attending a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) in accordance with any regulations promulgated by the Secretary.

**(d) Annual payments.**

(1)(A) The Secretary may enter into an agreement, which shall be effective for not more than 4 years, with one State maritime academy (not including regional maritime academies) located in each State or territory of the United States which meets the requirements of subsection (f)(1), and with each regional maritime academy which meets the requirements of subsection (f)(1), to make annual payments to each such academy for the maintenance and support of such academy.

(B) Subject to subparagraph (C), the annual payment to such State maritime academy shall be at least equal to the amount given to the academy for its maintenance and support by the State in which it is located, and to such regional maritime academy shall be at least equal to the amount given the academy by all States and territories cooperating to sponsor the academy.

(C) The amount under subparagraph (B) may not be more than \$25,000, except that the amount shall be—

- (i) \$100,000 to such State maritime academy if the academy meets the condition set forth in subsection (f)(2); or
- (ii) \$200,000 to such regional maritime academy if the academy meets the condition set forth in subsection (f)(2).

(2) The Secretary shall provide to each State maritime academy guidance and assistance in developing courses on the operation and maintenance of new vessels, on equipment, and on innovations being introduced to the merchant marine of the United States.

**(e) Detailing of personnel.** Upon the request of the Governor of any State or territory, the President may detail, without reimbursement, any of the personnel of the United States Navy, the United States Coast Guard, or the United States Maritime Service to any State maritime academy to serve as superintendents, professors, lecturers, or instructors at such academy.

**(f) Conditions to receiving payments or use of vessels.**

(1) As a condition to receiving any payment or the use of any vessel under this section, any State maritime academy shall—

(A) provide courses of instruction on navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new vessels and equipment, and innovations being introduced to the merchant marine of the United States;

(B) agree in writing to conform to such standards for courses, training facilities, admissions, and instruction as are established by the Secretary after consultation with the superintendents of the State maritime academies; and

(C)<sup>64</sup> agree in writing to require, as a condition for graduation, that each individual who is a citizen of the United States and who is attending the academy in a merchant marine officer preparation program shall pass the examination administered by the Coast Guard required for issuance of a license under section 7101 of title 46, United States Code.

(2) As a condition to receiving an annual payment of any amount in excess of \$25,000 under subsection (d), a State maritime academy shall agree to admit to such academy each year a number of individuals who meet the admission requirements of such academy and who are citizens of the United States residing in States and territories of the United States other than the States or territories, or both, supporting such academy. The Secretary shall determine the number of individuals under this paragraph for each State maritime academy so that such number does not exceed one-third of the total number of individuals attending such academy at any time.

**(g) Student incentive payment agreements.<sup>65</sup>**

(1) The Secretary may enter into an agreement, which shall be effective for not more than 4 academic years, with any individual, who is a citizen of the United States and is attending a State maritime academy which entered into an agreement with the Secretary under subsection (d)(1), to make student incentive payments to such individual, which

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<sup>64</sup> Section 3(a) of Public Law 101-115, approved October 13, 1989 added section 1304(f)(1)(C). Section 3(b) provides: "(b) The requirements set forth in subsection (f)(1)(C) of section 1304 of the Merchant Marine Act, 1936, as added by subsection (a) of this section, shall be a condition to any payment or use of any vessel received by a State maritime academy under section 1304 after December 31, 1989." Section 706 of Public Law 101-595, approved November 16, 1990, provides that section 3 of Public Law 101-115, shall not be effective prior to October 1, 1994.

<sup>65</sup> Section 6201(a)(1) of Public Law 102-587, approved November 4, 1992 (196 STAT. 5093), increased the student incentive payment from \$1,200 to \$3,000. Section 6201(a)(2) provides that this increased amount applies to the academic years beginning after the date of enactment.

payments shall be in amounts equaling \$3,000 for each academic year and which payments shall be—

(A) allocated among the various State maritime academies in a fair and equitable manner;

(B) used to assist the individual in paying the cost of uniforms, books, and subsistence; and

(C) paid by the Secretary as the Secretary shall prescribe while the individual is attending the academy.

(2) Each agreement entered into under paragraph (1) shall require the individual to accept midshipman and enlisted reserve status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before receiving any student incentive payments under this subsection.

(3) Each agreement entered into under paragraph (1) shall obligate the individual receiving student incentive payments under the agreement—

(A) to complete the course of instruction at the State maritime academy which the individual is attending, unless the individual is separated by such academy;

(B) to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from such State maritime academy of such individual and to fulfill the requirements for such license not later than 3 months after such graduation date;

(C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from such State maritime academy of such individual;

(D) to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from such State maritime academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 3 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(4) If the Secretary determines that any individual who has accepted the payment described in paragraph (1) has failed to fulfill the part of the agreement (required by paragraph (1)) described in paragraph (3)(A), such individual may be ordered by the Secretary of the Navy to active duty in the United States Navy to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

(5) If the Secretary determines that any individual has failed to fulfill any part of the agreement (required by paragraph (1)) described in subparagraphs (B), (C), (D), (E), or (F) of paragraph (3), such individual may be ordered to active duty to serve a period of time not less than 2 years and not more than the unexpired portion (as determined by the Secretary) of the service required by subparagraph (E) of such paragraph. The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

(6) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (3) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to subparagraph (E) of such paragraph must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(7) This subsection shall apply only to individuals first entering a State maritime academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980.

**(h) Appointment of cadet as midshipman in United States Naval Reserve.** Any citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

**SEC. 1305. ADDITIONAL TRAINING (46 App. U.S.C. 1295d (2001)).**

(a) The Secretary may provide additional training on maritime subjects, as the Secretary deems necessary, to supplement other training opportunities and may make any such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States.

(b) The Secretary may prepare or purchase any equipment or supplies required for any training provided under subsection (a) and may contract with any person, partnership, firm, association, or corporation (without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)) for the performance of any services deemed necessary by the Secretary in the preparation of any such equipment or supplies and in the supervision and administration of any such training.

(c)(1) The Secretary shall assist maritime training institutions approved by the Secretary in establishing a maritime oil pollution prevention, response, and clean-up training program.

(2) Under the program established under paragraph (1)—

(A) the Secretary may provide, to maritime training institutions approved by the Secretary, vessels described in paragraph (4), with title free of all liens, subject to the requirements specified under paragraph (3); and

(B) in return for receipt of such vessels, such institutions shall—

(i) employ the vessels for the training of students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills; and

(ii) make the vessels and qualified students available to appropriate Federal, State, and local oil spill response authorities in the event of a maritime oil spill.

(3) The requirements referred to in paragraph (2)(A) are as follows:

(i) any vessel provided under paragraph (2)(A) shall be tendered to the approved maritime training institution at a location determined by the Secretary;

(ii) no such vessel may be sold, traded, chartered, donated, scrapped, or in any way altered or disposed of without the prior approval of the Secretary;

(iii) no such vessel may be used in competition with any privately-owned vessel documented under the laws of the United States or any State, unless necessary to carry out the purposes of this subsection;

(iv) any approved maritime training institution in possession of such a vessel which can no longer utilize the vessel for training

purposes shall return the vessel to the Secretary, who shall take possession of the vessel at the training institution and thereafter may dispose of the vessel, or provide the vessel to another approved maritime training institution, as the Secretary determines appropriate; and

(v) such other requirements or conditions as the Secretary determines appropriate.

(4) The vessels referred to in paragraph (2)(A) are United States-built offshore supply vessels and United States-built tug/supply vessels in the possession of the Maritime Administration as a result of defaults on loans guaranteed under title XI of this Act.

**SEC. 1306. UNITED STATES MARITIME SERVICE (46 App. U.S.C. 1295e (2001)).**

(a) **Establishment and maintenance.** The Secretary may establish and maintain a voluntary organization for the training of citizens of the United States to serve on merchant marine vessels of the United States to be known as the United States Maritime Service.

(b) **Enrollment; compensation; course of study and periods of training; uniforms.** The Secretary may determine the number of individuals to be enrolled for training and reserve purposes in such service, to fix the rates of pay and allowances of such individuals without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification and General Schedule pay rates), to prescribe the course of study and the periods of training in such service, and to prescribe the uniform of such service and the rules governing the wearing and furnishing of such uniform.

(c) **Ranks, grades, and ratings same as for United States Coast Guard.** The ranks, grades, and ratings for personnel of the United States Maritime Service shall be the same as are then prescribed for the personnel of the United States Coast Guard.

**SEC. 1307. CIVILIAN NAUTICAL SCHOOL (46 App. U.S.C. 1295f (2001)).**

(a) **Definition.** As used in this section, the term "civilian nautical school" means any school operated and conducted in the United States (except the Academy maintained under section 1303, any State maritime academy assisted under section 1304, and any other school operated by the United States or any agency of the United States) which offers instruction to individuals quartered on board any vessel for the primary purpose of training them for service in the merchant marine.



(b) **Examination and inspection of school; rating and certification.** Each civilian nautical school shall be subject to examination and inspection by the Secretary, and the Secretary may (under such rules and regulations as the Secretary may prescribe) provide for the rating and certification of such schools as to the adequacy of the course of instruction, the competency of the instructors, and the suitability of the equipment used by, or in connection with, such school.

(d) **Fines and penalties. Whoever—**

(1) violates this section or any regulations promulgated to implement this section; shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, for each offense.

**SEC. 1308. POWERS AND DUTIES OF SECRETARY (46 App. U.S.C. 1295g (2001)).**

(a) **Rules and regulations.** The Secretary shall establish such rules and regulations as may be necessary to carry out this title.

(b) **Excess vessels and equipment.** The Secretary may cooperate with and assist the Academy, any State maritime academy, and any nonprofit training institution which has been jointly approved by the Secretary and the Secretary of the department in which the United States Coast Guard is operating as offering training courses which meet Federal regulations for maritime training, by making vessels, shipboard equipment, and other marine equipment, owned by the United States which have been determined to be excess or surplus, available by gift, loan, sale, lease, or charter to such institution for instructional purposes on such terms as the Secretary deems appropriate.

(c) **Securing of information, facilities, or equipment; detailing of personnel.**

(1) The Secretary may secure directly from any department or agency of the United States any information, facilities, or equipment, on a reimbursable basis, necessary to carry out this title.

(2) Upon the request of the Secretary, the head of any department or agency of the United States (including any military department of the United States) may detail, on a reimbursable basis, any of the personnel of such department or agency to the Secretary to assist in carrying out this title.

(d) **Employment of personnel.** To carry out this title, the Secretary may employ at the Academy any individual as a professor, lecturer, or instructor, without regard to the provisions of title 5, United States Code (governing appointments in the competitive service), and may pay such individual without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

**TRAINING OF FUTURE NAVAL OFFICERS UNDER  
NAVAL RESERVE OFFICER TRAINING CORPS PRO-  
GRAMS AT MERCHANT MARINE ACADEMIES FOR  
PROMOTION OF MAXIMUM INTEGRATION OF NAVAL  
AND MERCHANT MARINE SEAPOWER OF THE  
NATION (46 App. U.S.C. 1126-1 (2001)).<sup>66</sup>**

(a) It is the policy of the United States that the United States Navy and the Merchant Marine of the United States work closely together to promote the maximum integration of the total seapower forces of the Nation. In furtherance of this policy, it is necessary and desirable that special steps be taken to assure that Naval Reserve Officer Training Corps programs (for training future naval officers) be maintained at Federal and State merchant marine academies.

(b) It is the sense of the Congress that the Secretary of the Navy should work with the Maritime Administrator and the administrators of the several merchant marine academies to assure that the training available at these academies is consistent with Navy standards and needs.

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<sup>66</sup>Enacted as section 603 of Public Law 94-361, approved July 14, 1976 (90 STAT. 929), as amended.

## **MARITIME ADMINISTRATION FUNDING.**

**A. Authorizations.** Section 3501 of Public Law 107-107, approved December 28, 2001 (115 STAT. 1391), the National Defense Authorization Act for fiscal year 2002, provides:

### **Sec. 3501. Authorization of Appropriations for Fiscal Year 2002.**

Funds are hereby authorized to be appropriated for fiscal year 2002, to be available without fiscal year limitation if so provided in appropriation Acts, for the use of the Department of Transportation for the Maritime Administration as follows:

(1) For expenses necessary for operations and training activities, \$89,054,000.

(2) For expenses under the loan guarantee program authorized by title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), \$103,978,000, of which—

(A) \$100,000,000 is for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)) of loan guarantees under the program; and

(B) \$3,978,000 is for administrative expenses related to loan guarantee commitments under the program.

(3) For expenses to dispose of obsolete vessels in the National Defense Reserve Fleet, \$10,000,000.

**B. Appropriations.** Public Law 107-77, approved November 28, 2001 (115 STAT. 748, 791), the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, appropriated funds for the Maritime Administration, as follows:

#### **Maritime Security Program.**

For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, \$98,700,000, to remain available until expended.

#### **Operations and Training.**

For necessary expenses of operations and training activities authorized by law, \$89,054,000, of which \$13,000,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy.

#### **Maritime Guarantee Loan (Title XI) Program Account.**

For the cost of guaranteed loans, as authorized by the Merchant Marine Act, 1936, \$33,000,000, to remain available until expended:

Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended. In addition, for administrative expenses to carry out the guaranteed loan program, not to exceed \$3,978,000, which shall be transferred to and merged with the appropriation for Operations and Training.

**Administrative Provisions - Maritime Administration.**

Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control of the Maritime Administration, and payments received therefore shall be credited to the appropriation charged with the cost thereof: Provided, That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts. No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936, or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior Appropriations Act.

**C. Annual Reports. Marad Reports.** Section 3506 of Public Law 106-398, approved October 30, 2000 (114 STAT. 1654A-494), the Department of Defense Authorization Act for FY 2001, provides:

**Sec. 3506. Reporting of Administered and Oversight Funds.** The Maritime Administration, in its annual report to the Congress under section 208 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1118), and in its annual budget estimate submitted to the Congress, shall state separately the amount, source, intended use, and nature of any funds (other than funds appropriated to the Administration or to the Secretary of Transportation for use by the Administration) administered, or subject to oversight, by the Administration.

# **MARITIME LIABILITY**

## **CHAPTER 301—GENERAL.**

### **46 U.S.C. 30101 (2001). DEFINITIONS.**

In this subtitle—

- (1) “documented vessel” means a vessel documented under chapter 121 of this title;
- (2) “foreign vessel” means a vessel of foreign registry or operated under the authority of a foreign country;
- (3) “public vessel” means (except in chapter 315 of this title) a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country;
- (4) “recreational vessel” means a vessel—
  - (A) operated primarily for pleasure; or
  - (B) leased, rented, or demise chartered to another for the latter’s pleasure;
- (5) “seaman” means a master or a crewmember of a vessel in operation;
- (6) “State” means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States;
- (7) “State vessel” means a vessel owned or demise chartered by the government of a State or an authority or a political subdivision of a State;
- (8) “United States”, when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; and
- (9) “vessel of the United States” means a vessel documented under chapter 121 of this title, numbered under chapter 123 of this title, or titled under the law of a State.

## **CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS**

### **SUBCHAPTER I—GENERAL.**

### **46 U.S.C. 31301 (2001). DEFINITIONS.**

In this chapter—

- (1) “acknowledge” means making—
  - (A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, 1961;

(2) "district court" means—

(A) a district court of the United States (as defined in section 451 of title 28);

(B) the District Court of Guam;

(C) the District Court of the Virgin Islands;

(D) the District Court for the Northern Mariana Islands;

(E) the High Court of American Samoa; and

(F) any other court of original jurisdiction of a territory or possession of the United States;

(3) "mortgagee" means—

(A) a person to whom property is mortgaged; or

(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;

(4) "necessaries" includes repairs, supplies, towage, and the use of a dry dock or marine railway;

(5) "preferred maritime lien" means a maritime lien on a vessel—

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel;

(E) for general average; or

(F) for salvage, including contract salvage; and

(6) "preferred mortgage"—

(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office.

#### **46 U.S.C. 31302 (2001)). AVAILABILITY OF INSTRUMENTS, COPIES, AND INFORMATION.**

The Secretary of Transportation shall—

(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

**46 U.S.C. 31303 (2001). CERTAIN CIVIL ACTIONS NOT AUTHORIZED.** If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

**46 U.S.C. 31304 (2001). LIABILITY FOR NONCOMPLIANCE.**

(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

**46 U.S.C. 31305 (2001). WAIVER OF LIEN RIGHTS.** This chapter does not prevent a mortgagee or other lien holder from waiving or subordinating at any time by agreement or otherwise the lien holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

**46 U.S.C. 31306 (2001). DECLARATION OF CITIZENSHIP.**

(a) Except as provided by the Secretary of Transportation, when an instrument transferring an interest in a vessel is presented to the Secretary of Transportation for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

**46 U.S.C. 31307 (2001). STATE STATUTES SUPERSEDED.**

This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessities.

**46 U.S.C. 31308 (2001). SECRETARY OF COMMERCE OR TRANSPORTATION AS MORTGAGEE.** When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 *et seq.*), subject to section 362(b) of title 11.

**46 U.S.C. 31309 (2001). GENERAL CIVIL PENALTY.**

Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than \$10,000.

**46 U.S.C. 31321 (2001). FILING, RECORDING, AND DISCHARGE.**

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary of Transportation to be valid, to the extent the vessel is involved, against any person except—

- (A) the grantor, mortgagor, or assignor;
- (B) the heir or devisee of the grantor, mortgagor, or assignor; and
- (C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) (A) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.



(B) A filing made electronically under subparagraph (A) shall not be effective after the 10-day period beginning on the date of the filing unless the original instrument is provided to the Secretary within that 10-day period.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

(1) identify the vessel;

(2) state the name and address of each party to the instrument;

(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

(5) state the interest sold, conveyed, mortgaged, or assigned; and

(6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request

of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

#### **46 U.S.C. 31322 (2001) PREFERRED MORTGAGES.**

(a) A preferred mortgage is a mortgage, whenever made, that—

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title; and

(3)(A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter.

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security interest that is deemed to be a preferred mortgage under subsection (d) of this section, may have any rate of interest in which the parties agree.<sup>1</sup>

(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

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<sup>1</sup> Subsection (b) was amended by section 401(c)(1) of Public Law 105-383, approved November 13, 1998 (112 STAT. 3411, 3425), the Coast Guard Authorization Act of 1998.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d)(1) A mortgage, security agreement, or instrument granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13106(b)(8) of this title; and

(B) information on the vessel covered by the mortgage, security agreement, or instrument is made available to the Secretary under chapter 125 of this title.

(2) This subsection applies to mortgages, security agreements, or instruments covering vessels titled in a State after—

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed—

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

\* \* \* \* \*

**Effective April 1, 2003, 46 U.S.C. 31322 has been amended to read as follows:<sup>2</sup>**

**46 U.S.C. 31322. Preferred mortgages**

- (a) A preferred mortgage is a mortgage, whenever made, that--
  - (1) includes the whole of the vessel;
  - (2) is filed in substantial compliance with section 31321 of this title; and
  - (3) (A) covers a documented vessel; or
  - (B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter and
  - (4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee--
    - (A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;
    - (B) a state or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;
    - (C) a farm credit lender established under title 12, chapter 23 of the United States Code;
    - (D) a commercial fishing and agriculture bank established pursuant to State law;

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<sup>2</sup> Section 202(b) of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-618), the American Fisheries Act, amended 46 U.S.C. 31322(a). Section 203(a) of Public Law 105-277, provides that the amendments made by Section 202, will be effective on October 1, 2001. Section 213(g) of Public Law 105-277, provides: "(g) International Agreements. In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after such date."

Section 2202 of Public Law 107-20, approved July 24, 2001 (115 STAT. 168), the Supplemental Appropriations Act, 2001, further amended 46 U.S.C. 31322. Section 2202(d) of Public Law 107-20, provides: "(d) Section 31322 of title 46, United States Code as amended in this section, and as amended by section 202(b) of the American Fisheries Act (Public Law 105-277, division C, title II) shall not take effect until April 1, 2003, nor shall the Secretary of Transportation, in determining whether a vessel owner complies with the requirements of section 12102(c) of title 46, United States Code, consider the citizenship status of a lender, in its capacity as a lender with respect to that vessel owner, until after April 1, 2003." Section 2202(e) of Public Law 107-20, made conforming amendments to Section 213(g) of Public Law 105-277.

Appendix B provides a brief review of these amendments to 46 U.S.C. 31322 at page 515, *infra*,

(E) a commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under section 12102(a) of this title; or

(F) a mortgage trustee under subsection (f) of this section.

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security interest that is deemed to be a preferred mortgage under subsection (d) of this section, may have any rate of interest to which the parties agree.

(c) (1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection--

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d) (1) A mortgage, security agreement, or instrument granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if--

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13106(b)(8) of this title; and

(B) information on the vessel covered by the mortgage, security agreement, or instrument made available to the Secretary under chapter 125 of this title.

(2) This subsection applies to mortgages, security agreements, or instruments covering vessels titled in a State after--

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed--

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

(f)(1) A mortgage trustee may hold in trust, for an individual or entity, an instrument or evidence of indebtedness, secured by a mortgage of the vessel to the mortgage trustee, provided that the mortgage trustee--

(A) is eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section;

(B) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(C) is authorized under those laws to exercise corporate trust powers;

(D) is subject to supervision or examination by an official of the United States Government or a State;

(E) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and

(F) meets any other requirements prescribed by the Secretary.

(2) If the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section, the Secretary must determine that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under section 12102(c) of this title.

(3) A vessel with a fishery endorsement may be operated by a mortgage trustee only with the approval of the Secretary.

(4) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under this section only with the approval of the Secretary.

(5) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this subsection is voidable by the Secretary.

(g) For purposes of this section a "commercial lender" means an entity primarily engaged in the business of lending and other financing transactions with a loan portfolio in excess of \$100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified to the Secretary by such lender.

(h) For purposes of this section a "lender syndicate" means an arrangement established for the combined extension of credit of not less than \$20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to subsection (f), no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.

## **SUBCHAPTER II. COMMERCIAL INSTRUMENTS.**

### **46 U.S.C. 31323 (2001). DISCLOSING AND INCURRING OBLIGATIONS BEFORE EXECUTING PREFERRED MORTGAGES.**

(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

- (1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;
- (2) wages for the crew of the vessel;
- (3) general average; or
- (4) salvage, including contract salvage.

(c) On conviction of a mortgagor under section 31330(a)(1)(A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

### **46 U.S.C. 31324 (2001). RETENTION AND EXAMINATION OF MORTGAGES OF VESSELS COVERED BY PREFERRED MORTGAGES.**

(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

**46 U.S.C. 31325 (2001). PREFERRED MORTGAGE LIENS AND ENFORCEMENT.<sup>3</sup>**

(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

(b) On default of any term of the preferred mortgage, the mortgagee may—

(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel;

(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for documentation is filed under chapter 121 of this title, a vessel titled in a State, a foreign vessel, or a mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness if—

(A) the remedy is allowed under applicable law; and

(B) the exercise of the remedy will not result in a violation of section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.

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<sup>3</sup> Section 1124(a) and (b) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3980), amended 46 U.S.C. 31325, by the addition of subsection (b)(3) and (f). Section 1124(c) provides: "(c) Rule of Construction. The amendment made by subsections (a) and (b) may not be construed to imply that remedies other than judicial remedies were not available before the date of enactment of this section to enforce claims for outstanding indebtedness secured by mortgaged vessels."



(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

(A) the master or individual in charge of the vessel;

(B) any person that recorded under section 31343(a) or (d) of this title a notice of a claim of an undischarged lien on the vessel; and

(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

(e) In a civil action brought under subsection (b)(1) of this section—

(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded a notice of a claim of an undischarged lien on the vessel under section 31343(a) or (d) of this title before notice of the proposed transfer is given to the Secretary.

(2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under

this section, regardless of whether notice is required by this subsection or given.

(3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

**46 U.S.C. 31326 (2001). COURT SALES TO ENFORCE PREFERRED MORTGAGE LIENS AND MARITIME LIENS AND PRIORITY OF CLAIMS.**

(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

(1) the preferred mortgage lien, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

(2) for a foreign vessel whose mortgage has not been guaranteed under title XI of that Act, the preferred mortgage lien is subordinate to a maritime lien for necessities provided in the United States.

**46 U.S.C. 31327 (2001). FORFEITURE OF MORTGAGEE INTEREST.** The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

**46 U.S.C. 31329 (2001). COURT SALES OF DOCUMENTED VESSELS.**

(a) A documented vessel may be sold by order of a district court only to—

(1) a person eligible to own a documented vessel under section 12102 of this title; or

(2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

- (1) the vessel must be held by the mortgagee for resale;
- (2) the vessel held by the mortgagee is subject to section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and
- (3) the sale of the vessel to the mortgagee is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary.

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

#### **46 U.S.C. 31330 (2001). PENALTIES.**

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title;

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary of Transportation; or

(D) with intent to defraud, does not comply with section 31321(h) of this title.

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than \$10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title;

(C) files with the Secretary a mortgage made not in good faith; or

(D) does not comply with section 31321(h) of this title.

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than \$25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

### **SUBCHAPTER III. MARITIME LIENS.**

#### **46 U.S.C. 31341 (2001). PERSONS PRESUMED TO HAVE AUTHORITY TO PROCURE NECESSARIES.**

(a) The following persons are presumed to have authority to procure necessities for a vessel:

- (1) the owner;
- (2) the master;
- (3) a person entrusted with the management of the vessel at the port of supply; or
- (4) an officer or agent appointed by—
  - (A) the owner;
  - (B) a charterer;
  - (C) an owner pro hac vice; or
  - (D) an agreed buyer in possession of the vessel.

(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessities for the vessel.

#### **46 U.S.C. 31342 (2001). ESTABLISHING MARITIME LIENS.**

(a) Except as provided in subsection (b) of this section, a person providing necessities to a vessel on the order of the owner or a person authorized by the owner—

- (1) has a maritime lien on the vessel;
- (2) may bring a civil action in rem to enforce the lien; and
- (3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.

#### **46 U.S.C. 31343 (2001). RECORDING AND DISCHARGING LIENS ON PREFERRED MORTGAGE VESSELS.**

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel covered by a preferred mortgage filed or recorded under this chapter may record with the Secretary of Transportation a notice of that person's lien claim on the vessel. To be recordable, the notice must—

- (1) state the nature of the lien;

- (2) state the date the lien was established;
- (3) state the amount of the lien;
- (4) state the name and address of the person; and
- (5) be signed and acknowledged.

(b) The Secretary shall record a notice complying with subsection (a) of this section.

(c) On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the State in which the vessel is titled.